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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह असग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 31st August, 1987:—

I

BILL NO. XXXII OF 1987

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Companies (Amendment) Act, 1987.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

1 of 1956.

2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act), for clause (*45*), the following clauses shall be substituted, namely:—

'(45) "secretary" means a Company Secretary within the meaning of clause (*c*) of sub-section (*1*) of section 2 of the Company Secretaries Act, 1980, and includes any other individual possessing the prescribed qualifications and appointed to perform the duties

56 of 1980.

which may be performed by a secretary under this Act and any other ministerial or administrative duties;

(*45A*) "secretary in whole-time practice" means a secretary who shall be deemed to be in practice within the meaning of sub-section (*2*) of section 2 of the Company Secretaries Act, 1980 and who is not in full-time employment;'. 56 of 1980.

Substitution of new section for section 5.

3. For section 5 of the principal Act, the following section shall be substituted, namely:—

Meaning of "officer who is in default".

'5. For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:—

(*a*) the managing director or managing directors;

(*b*) the whole-time director or directors;

(*c*) the manager;

(*d*) the secretary;

(*e*) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(*f*) any person charged by the Board with the responsibility of complying with that provision;

(*g*) where any company does not have any of the officers specified in clauses (*a*) to (*c*), any director or directors who shall be specified by the Board in this behalf:

Provided that where the Board exercises any power under clause (*f*) or clause (*g*), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.'.

Amendment of section 10E.

4. In section 10E of the principal Act,—

(*a*) for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) **As soon as may be after the commencement of the Companies (Amendment) Act, 1987, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.**

(*1A*) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by

the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.";

(b) to sub-section (2), the following proviso shall be added, namely:—

"Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1987, as the chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.";

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The members of the Company Law Board shall possess such qualifications and experience as may be prescribed.";

(d) sub-section (4A) shall be omitted;

(e) in sub-section (4B), for the words, brackets, figure and letter "Without prejudice to the provisions of sub-section (4A), the Board, with the previous approval of the Central Government.", the words "The Board" shall be substituted;

(f) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.".

Insertion of new section 10F.

5. In Part IA of the principal Act, after section 10E, the following section shall be inserted, namely:—

Appeals against the orders of the Company Law Board.

"10F. Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.".

Amendment of section 33.

6. In action 33 of the principal Act,—

(*a*) in sub-section (*1*), for clause (c), the following clause shall be substituted, namely:—

"(c) the agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole-time director or manager.";

(*b*) in sub-section (*2*),—

(*i*) for the words "a chartered accountant practising in India", the words "a secretary, or a chartered accountant, in whole-time practice in India" shall be substituted;

(*ii*) the words ", managing agent, secretaries and treasurers" shall be omitted.

Amendment of section 43A.

7. In section 43A of the principal Act,—

(*a*) in sub-section (*1A*), for the words "less than rupees one crore", the words "less than such amount as may be prescribed" shall be substituted;

(*b*) after sub-section (*1B*), the following sub-section shall be inserted, namely:—

"(*1C*) Where, after the commencement of the Companies (Amendment) Act, 1987, a private company invites, accepts or renews deposits from the public, such private company shall, on and from the date on which such invitation, acceptance or renewal, as the case may be, is first made after such commencement, become a public company and thereupon all the provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (*iii*) of sub-section (*1*) of section 3 and the number of its members may be or may at any time be, reduced below seven.";

(*c*) sub-sections (*6*) and (*7*) shall be omitted;

(*d*) in sub-section (*8*),—

(*i*) in clause (*a*), the word "or" at the end shall be omitted;

(*ii*) clause (*b*) shall be omitted;

(*iii*) in clause (*c*), for the words "rupees one crore or more", the words, brackets, figure and letter "such amount as is referred to in sub-section (*1A*) or more" shall be substituted;

(*iv*) after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) that the private company did not invite, accept or renew deposits from the public.";

(*e*) after sub-section (*9*) and before the *Explanation*, the following sub-section shall be inserted, namely:—

"(*10*) Subject to the other provisions of this Act, any reference in this section to inviting, accepting or renewing deposits

from the public shall be construed as including a reference to inviting, accepting or renewing deposits from any section of the public, whether selected as members or debenture holders of the company concerned or in any other manner, and the provisions of section 67 shall, so far as may be, apply, as if the reference to invitation to the public to subscribe for shares or debentures occurring in that section, includes a reference to invitation from the public for acceptance of deposits.";

(*f*) in the *Explanation*, after clause (*b*), the following clause shall be inserted, namely:—

'(*c*) "deposit" has the same meaning as in section 58A.'.

Amendment of section 56.

8. In section 56 of the principal Act, in sub-section (3),—

(*a*) in the opening paragraph, for the words "by a prospectus", the words "by a memorandum containing such salient features of a prospectus as may be prescribed" shall be substituted;

(*b*) in the proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that a copy of the prospectus shall, on a request being made by any person, be furnished to him:

Provided further that".

Amendment of section 58A.

9. In section 58A of the principal Act,—

(*a*) in sub-section (*3*), in clause (*a*), for the words "terms of such deposit", the words "terms and conditions of such deposit" shall be substituted;

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1987, shall, unless renewed in accordance with the rules made under sub-section (*1*), be repaid in accordance with the terms and conditions of such deposit.";

(*c*) after sub-section (*8*) and before the *Explanation*, the following sub-sections shall be inserted, namely:—

"(*9*) Where the Company Law Board is satisfied, either on its own motion, or on the application of not less than ten depositors, or of any depositor or depositors to whom not less than ten per cent. of the total deposits of such company due for repayment is outstanding, that it is necessary so to do to safeguard the interests of the company, the depositors of such company or in the public interest, it may, by order, grant extension of time for making such repayment, subject to such conditions as may be specified in the order:

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(*10*) Whoever fails to comply with any order made by the Company Law Board under sub-section (*9*) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.".

Amendment of section 73.

10. In section 73 of the principal Act,—

(*a*) sub-section (*1*) shall be re-numbered as sub-section (*1A*) thereof, and before sub-section (*1A*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*1*) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.";

(*b*) in sub-section (*1A*), as so re-numbered,—

(*i*) for the words "application has been, or will be,", the words, brackets and figure "application under sub-section (*1*) has been" shall be substituted;

(*ii*) the words "if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day", shall be omitted;

(*c*) in sub-section (*2*),—

(*i*) for the words "applied for as aforesaid", the words, brackets and figure "applied under sub-section (*1*)" shall be substituted;

(*ii*) for the portion beginning with the words "the directors of the company" and ending with the words "the expiry of the eighth day:", the following shall be substituted, namely:—

"the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.";

(*iii*) the proviso shall be omitted;

(*d*) in sub-section (*2A*),—

(*i*) for the portion beginning with the words "the directors of the company" and ending with the words "the expiry of the eighth day:", the following shall be substituted, namely:—

"the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with

interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.";

(*ii*) the proviso shall be omitted.

Amendment of section 74.

11. In section 74 of the principal Act,—

(*a*) for the words "the eighth day, or the tenth day", the words "or the eighth day" shall be substituted;

(*b*) for the words "eighth, or tenth day", the words "or eighth day" shall be substituted.

Substitution of new heading for heading above section 80.

12. For the heading above section 80, the heading "Issue and Redemption of Preference Shares" shall be substituted.

Amendment of section 80.

13. In section 80 of the principal Act, after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*5A*) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1987, issue any preference share which is irredeemable or is redeemable after the expiry of a period of ten years from the date of its issue.".

Insertion of new section 80A.

14. After section 80 of the principal Act, and before the heading *"Further Issue of Capital"*, the following section shall be inserted, namely:—

Redemption of irredeemable preference shares, etc.

"80A. (*1*) Notwithstanding anything contained in the terms of issue of any preference shares, every preference share issued before the commencement of the Companies (Amendment) Act, 1987,—

(*a*) which is irredeemable, shall be redeemed by the company within a period not exceeding five years from such commencement, or

(*b*) which is not redeemable before the expiry of ten years from the date of issue thereon in accordance with the terms of its issue and which had not been redeemed before such commencement, shall be redeemed by the company on the date on which such share is due for redemption or within a period not exceeding five years from such commencement, whichever is earlier:

Provided that where a company is not in a position to redeem any such share within the period aforesaid and to pay the dividend, if any, due thereon (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the Company Law Board, on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable preference shares equal to the amounts due (including the dividend thereon), in respect of the unredeemed preference shares,

and on the issue of such further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.

(2) Nothing contained in section 106 or any scheme referred to in sections 391 to 395, or in any scheme made under section 396, shall be deemed to confer power on any class of shareholders by resolution or on any court or the Central Government to vary or modify the provisions of this section.

(3) If any default is made in complying with the provisions of this section,—

(*a*) the company making such default shall be punishable with fine which may extend to one thousand rupees for every day during which such default continues; and

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.".

Amendment of section 108.

15. In section 108 of the principal Act, in sub-clause (*i*) of clause (b) of sub-section (*1A*), for the words "two months", the words "twelve months" shall be substituted.

Substitution of new section for section 111.

16. For section 111 of the principal Act, the following section shall be substituted, namely:—

Power to refuse registration and appeal against refusal.

"111. (*1*) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) If—

(*a*) the name of any person—

(*i*) is, without sufficient cause, entered in the register of members of a company, or

(*ii*) after having been entered in the register, is, without sufficient cause, omitted therefrom; or

(*b*) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (*1*)],

the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register.

(3) The Company Law Board may, after hearing the parties, either reject the application made under sub-section (2) or order rectification of the register, and in the latter case, direct the company to pay damages, if any, sustained by any party aggrieved.

(4) The Company Law Board, while acting under sub-section (3), may, at its discretion, make—

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any application under this section, the Company Law Board—

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(6) The provisions of sub-sections (2) to (5) shall apply in relation to the rectification of the register of debenture-holders as they apply in relation to the rectification of the register of members.

(7) If default is made in giving effect to the orders of the Company Law Board under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues.

(8) Every application to the Company Law Board under sub-section (2) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(9) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a court or other public authority, the provisions of sub-sections (2) to (5) shall apply as if the company were a public company:

Provided that the Company Law Board may, in lieu of an order under sub-section (3), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case.

(*10*) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(*11*) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.".

Amendment of section 113.

17. In section 113 of the principal Act,—

(*a*) in sub-section (*1*), for the opening portion, the following shall be substituted, namely:—

"Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred.".

(*b*) in sub-section (*3*), for the word "Court", the words "Company Law Board" shall be substituted.

Amendment of section 125.

18. In section 125 of the principal Act, in sub-section (*1*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.".

Amendment of section 130.

19. In section 130 of the principal Act,—

(*a*) for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"(*1*) The Registrar shall, in respect of each company, cause to be kept a register containing the particulars of all the charges requiring registration under this Part.

(*1A*) Every company shall forward to the Registrar for being entered in the register kept under sub-section (*1*) the particulars of all the charges requiring registration under this Part in such form and manner, and after payment of, such fees as may be prescribed.

(*1B*) The particulars of the charges referred to in sub-section (*1*) shall relate to,—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in sections 128 and 129;

(*b*) in the case of any other charge,—

(*i*) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;

(*ii*) the amount secured by the charge;

(*iii*) short particulars of the property charged; and

(*iv*) the persons entitled to the charge.

(*1C*) The pages of the register shall be consecutively numbered and the Registrar shall—

(*a*) cause to be kept in such register in the prescribed form, the documents of charges filed in such form and manner as may be prescribed; and

(*b*) sign or initial every page of such register.

(*2*) After entering the particulars of all the charges required under sub-section (*1*), the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of this Part to the person filing it.";

(*b*) in sub-section (*3*), for the words "a fee of one rupee", the words "such fee as may be prescribed" shall be substituted.

Amendment of section 149.

20. In section 149 of the principal Act, in sub-sections (*1*), (*2*) and (*2A*), for the words "one of the directors or the secretary", the words "one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice" shall be substituted.

Omission of sections 155 and 156.

21. Sections 155 and 156 of the principal Act shall be omitted.

Amendment of section 159.

22. In sub-section (*1*) of section 159 of the principal Act, in the proviso, for the words "any of the two", the words "any of the five" shall be substituted.

Amendment of section 161.

23. In section 161 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) the words "managing agent, secretaries and treasurers." shall be omitted;

(*ii*) the following proviso shall be inserted, namely:—

"Provided that where the annual return is filed by a company whose shares are listed on a recognised stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice.";

(*b*) in sub-section (*2*), for the words "both the signatories", the words "the signatories" shall be substituted.

Amendment of section 179.

24. In section 179 of the principal Act, sub-section (*1*), for clauses (*a*) to (*d*), the following clauses shall be substituted, namely:—

"(*a*) in the case of a public company having a share capital, by any member or members present in person or by proxy and holding shares in the company—

(*i*) which confer a power to vote on the resolution not being less than one tenth of the total voting power in respect of the resolution, or

(*ii*) on which an aggregate sum of not less than fifty thousand rupees has been paid up,

(*b*) in the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy, if more than seven such members are personally present,

(*c*) in the case of any other company, by any member or members present in person or by proxy and having not less than one tenth of the total voting power in respect of the resolution.".

Amendment of section 198.

25. In sub-section (*4*) of section 198 of the principal Act, after the words, brackets and figures "in sub-sections (*1*) to (*3*),", the words and figures "but subject to the provisions of section 269, read with Schedule XIII," shall be inserted.

Amendment of section 205.

26. In section 205 of the principal Act,—

(*a*) in sub-section (*2*), in clause (*d*), for the words and figures "the Indian Income-tax Act, 1922 or the rules made thereunder", the words "this Act or any rules made thereunder" shall be substituted; 11 of 1922.

(*b*) after sub-section (*2A*), the following sub-section shall be inserted, namely:—

"(*2B*) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares.".

Amendment of section 205 A.

27. In section 205A of the principal Act, in sub-section (*1*),—

(*a*) for the words ", or the warrant in respect thereof has not been posted", the words "or claimed" shall be substituted;

(*b*) for the words "or in relation to which no dividend warrant has been posted", the words "or unclaimed" shall be substituted;

(*c*) the following *Explanation* shall be inserted at the end, namely:—

'*Explanation*.—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.'.

Insertion of new section 206A.

28. After section 206 of the principal Act, the following section shall be inserted, namely:—

Right to dividend rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.

"206A. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company on the commencement of the Companies (Amendment) Act, 1987, then, notwithstanding anything contained in any other provision of this Act, the company shall, in relation to such shares,—

(*a*) transfer the dividend to the special account referred to in section 205A unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(*b*) keep in abeyance any offer of rights shares under clause (*a*) of sub-section (*1*) of section 81 and any issue of fully paid-up bonus shares in pursuance of sub-section (*3*) of section 205.".

Amendment of section 209.

29. In section 209 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) For the purposes of sub-sections (*1*) and (*2*), proper books of account shall not be deemed to be kept with respect to the matters specified therein,—

(*a*) if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and

(*b*) if such books are not kept on accrual basis and according to the double entry system of accounting.".

Amendment of section 217.

30. In section 217 of the principal Act,—

(*a*) in sub-section (*1*), after clause (*d*), the following clause shall be added, namely:—

"(*e*) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.";

(*b*) in sub-section (*2A*), in clause (*a*),—

(*1*) in sub-clause (*i*), for the words "thirty-six thousand rupees", the words "such sum as may be prescribed" shall be substituted;

(*2*) in sub-clause (*ii*), for the words "three thousand rupees per month", the words "such sum per month as may be prescribed; or" shall be substituted;

(3) after sub-clause (*ii*), the following sub-clause shall be inserted, namely:—

"(*iii*) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent. of the equity shares of the company.".

Amendment of section 219.

31. In section 219 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in the opening paragraph, for the portion beginning with the words "to every holder of debentures" and ending with the words "being persons so entitled", the following shall be substituted, namely:—

"to every trustee for the holders of any debentures issued by the company, whether such member or trustee is or is not entitled to have notices of general meetings of the company sent to him, and to all persons other than such members or trustees, being persons so entitled";

(*ii*) in the proviso,—

(*1*) in clause (*b*), the word "and" occurring at the end of sub-clause (*iii*) shall be omitted;

(*2*) in clause (*c*), the word "and" shall be added at the end, and after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) in the case of a company whose shares are listed on a recognised stock exchange, if the copies of the documents aforesaid are made available for inspection at the general meeting, and

(*i*) a statement containing the salient features of the above documents in the prescribed form is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting; and

(*ii*) such financial highlights as may be prescribed are published, not less than seven days before the date of the general meeting in at least two English language newspapers having circulation in more than one State and also at least in one newspaper of the language of the district in which the registered office of the company is situated.";

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Any member or holder of debentures of a company and any person from whom the company has accepted a sum of

money by way of deposit shall, on demand, be entitled to be furnished on payment of such fees as may be prescribed, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, including the profit and loss account and the auditors' report.";

(c) in sub-section (4), for the word "Court", the words ", Company Law Board" shall be substituted.

Amendment of section 220.

32. In section 220 of the principal Act, in sub-section (2), after the words "does not adopt the balance sheet,", the words "or is adjourned without adopting the balance sheet," shall be inserted.

Amendment of section 224.

33. In section 224 of the principal Act, in sub-section (*1B*), in the first proviso, for the words "per partner of the firm", the words "for every partner of the firm who is not in full-time employment elsewhere" shall be substituted.

Amendment of section 224A.

34. In sub-section (2) of section 224A of the principal Act, in clause (b) of the *Explanation*, the words, brackets and figures "or in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980" shall be added at the end.

40 of 1980.

Amendment of section 233B.

35. In section 233B of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (*1B*) of section 224 and with the previous approval of the Central Government:

Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (*1B*) of section 224.".

Substitution of new section for section 235.

36. For section 235 of the principal Act, the following section shall be substituted, namely:—

Investigation of the affairs of a company.

"235. (*1*) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where—

(*a*) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(*b*) in the case of a company having no share capital, an application has been received from not less than one-fifth of the persons on the company's register of members,

the Company Law Board may, after giving the parties an opportunity of being heard by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct.".

Amendment of section 236.

37. In section 236 of the principal Act,—

(*a*) for the words, brackets, letters and figures "under clause (*a*) or (*b*) of section 235", the words, brackets and figures "under sub-section (*2*) of section 235" shall be substituted;

(*b*) for the words "Central Government may require", the words "Company Law Board may require" shall be substituted.

Amendment of section 237.

38. In section 237 of the principal Act, in clause (b),—

(*a*) for the words "Central Government", the words "Company Law Board" shall be substituted;

(*b*) in sub-clause (*iii*), the words "the managing agent, the secretaries and treasurers," shall be omitted.

Amendment of section 241.

39. In sub-section (*2*) of section 241 of the principal Act,—

(*i*) in clause (*c*), for the words, brackets and letters "under clause (*a*) or (*b*)", the words, brackets and figure "in pursuance of the provisions of sub-section (*2*)" shall be substituted;

(*ii*) in clause (*d*), the word "and" at the end shall be omitted;

(*iii*) after clause (*d*), the following clause shall be inserted, namely:—

"(*dd*) shall, where the inspectors are appointed in pursuance of the provisions of sub-section (*2*) of section 235, furnish a copy of the report to the Company Law Board; and".

Amendment of section 245.

40. In sub-section (*1*) of section 245 of the principal Act, in sub-clause (*ii*) of clause (*c*), for the words, brackets and letters "under clause (*a*) or clause (*b*)", the words, brackets and figure "in pursuance of the provisions of sub-section (*2*)" shall be substituted.

Amendment of section 247.

41. In section 247 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (*1*), if the Company Law Board, in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purpose of determining the true persons—

(*a*) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(*b*) who are or have been able to control or materially to influence the policy of the company.".

Amendment of section 248.

42. In sub-section (*1*) of section 248 of the principal Act,—

(*a*) for the words "Where it appears to the Central Government", the words "Where it appears to the Central Government, or to the Company Law Board in any proceedings before it," shall be substituted;

(*b*) for the words "the Central Government may require", the words "the Central Government or the Company Law Board, as the case may be, may require" shall be substituted;

(*c*) for the words "to give the Central Government", the words "to give the Central Government or the Company Law Board, as the case may be," shall be substituted.

Amendment of section 250.

43. In section 250 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words and figures "Where it appears to the Central Government, whether in connection with any investigation under section 247, 248 or 249 or otherwise", the words and figures "Where it appears to the Company Law Board, whether on a reference made to it by the Central Government in connection with any investigation under section 247, 248 or 249 or on a complaint made by any person in this behalf" shall be substituted;

(*ii*) for the words "Central Government", at both the places where they occur, the words "Company Law Board" shall be substituted;

(*b*) for sub-sections (*3*) and (*4*), the following sub-sections shall be substituted, namely:—

"(*3*) Where a transfer of shares in a company has taken place and as a result thereof a change in the composition of the Board of directors of the company is likely to take place and the Company Law Board is of the opinion that any such change would be prejudicial to the public interest, it may, by order, direct that—

(*a*) the voting rights in respect of those shares shall not be exercisable for such period not exceeding three years as may be specified in the order;

(b) no resolution passed or action taken to effect a change in the composition of the Board of directors before the date of the order shall have effect unless confirmed by the Company Law Board.

(*4*) Where the Company Law Board has reasonable ground to believe that a transfer of shares in a company is likely to take place whereby a change in the composition of the Board of directors of the company is likely to take place and the Company Law Board is of the opinion that any such change would be prejudical to the public interest, the Company Law Board may, by order, direct that any transfer of shares in the company during such period not exceeding three years as may be specified in the order, shall be void.";

(*c*) in sub-section (*5*), for the words "Central Government", the words "Company Law Board" shall be substituted;

(*d*) sub-sections (*6*) and (*7*) shall be omitted;

(*e*) in sub-section (*8*), for the words "Central Government", the words "Company Law Board" shall be substituted.

Amendment of section 251.

44. In section 251 of the principal Act, for the words "the Registrar or to the Central Government or to an inspector appointed by that Government", the words "Company Law Board or to the Central Government or to the Registrar or to an inspector appointed by Central Government" shall be substituted.

Amendment of section 257.

45. In sub-section (*1*) of section 257 of the principal Act, the following shall be added at the end, namely:—

"along with a deposit of five hundred rupees which shall be refunded to such person or, as the case may be, to such member, if the person succeeds in getting elected as a director.".

Substitution of new section for section 269.

46. For section 269 of the principal Act, the following section shall be substituted, namely:—

Appointment of managing or whole-time director or manager to require Government approval only in certain cases.

'269. (*1*) On and from the commencement of the Companies (Amendment) Act, 1987, every public company, or a private company which is a subsidiary of a public company, having a paid up share capital of rupees twenty-five lakhs or more, shall have a managing or whole-time director or a manager.

(*2*) On and from the commencement of the Companies (Amendment) Act, 1987, no appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the prior approval of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form is filed within ninety days from the date of such appointment.

(*3*) Every appointment of a managing or whole-time director or a manager which requires the prior approval of the Central Government under sub-section (*2*) may be made without such approval if an application seeking approval to such appointment is made to the Central Government within a period of ninety days from the date of such appointment.

(*4*) The Central Government shall not accord its approval to an application made under sub-section (*3*), if it is satisfied that—

(*a*) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest; or

(*b*) the terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable.

(5) It shall be competent for the Central Government while according approval to an appointment under sub-section (3) to accord approval for a period lesser than the period for which the appointment is proposed to be made.

(6) Where the appointment of a person as a managing or whole-time director or a manager under sub-section (3) is not approved by the Central Government, or, where the Central Government *suo motu* or on any information received by it is, *prima facie*, of the opinion that any appointment made under sub-section (2) without prior approval of the Central Government has been made in contravention of the requirements of Schedule XIII, it shall be competent for the Central Government to refer the matter to the Company Law Board for decision.

(7) The Company Law Board shall, on receipt of a reference under sub-section (6), issue a notice to the company, the managing or whole-time director or the manager, as the case may be, and the director or other officer responsible for complying with the requirements of Schedule XIII, to show cause as to why such appointment shall not be terminated and the penalties provided under sub-section (9) shall not be imposed.

(8) The Company Law Board shall, if, after giving a reasonable opportunity to the company, the managing or whole-time director or the manager, or the officer who is in default, as the case may be, comes to the conclusion that the appointment has been made in contravention of the requirements of Schedule XIII, make an order declaring that a contravention of the requirements of Schedule XIII has taken place.

(9) On the making of an order by the Company Law Board under sub-section (8),—

(a) the company shall be liable to a fine which may extend to five thousand rupees;

(b) every officer of the company who is in default shall be liable to a fine of ten thousand rupees; and

(c) the appointment of the managing or whole-time director or manager, as the case may be, shall be deemed to have come to an end and the person so appointed shall, in addition to being liable to pay a fine of ten thousand rupees, refund to the company the entire amount of salaries, commissions and perquisites received or enjoyed by him between the date of his appointment and the passing of such order.

(10) If a company contravenes the provisions of sub-section (9) or any direction given by the Company Law Board under that sub-section, every officer of the company who is in default and the managing or whole-time director or the manager, as the case may be, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to fifty rupees for every day of default.

(11) All acts done by a managing or whole-time director or a manager, as the case may be, purporting to act in such capacity and

whose appointment has been found to be in contravention of Schedule XIII, shall, if the acts so done are valid otherwise, be valid notwithstanding any order made by the Company Law Board under sub-section (*8*).

Explanation.—In this section "appointment" includes re-appointment and "whole-time director" includes a director in the whole-time employmett of the company.'.

Amendment of section 310.

47. In section 310 of the principal Act,—

(*a*) in the proviso, for the words "two hundred and fifty rupees", the words "such sum as may be prescribed" shall be substituted;

(*b*) after the proviso as so amended, the following proviso shall be inserted, namely:—

"Provided further that where in the case of any private company which converts itself into a public company or becomes a public company under the provisions of section 43A, any provision relating to the remuneration of any director including a managing or whole-time director as contained in its memorandum or articles or in any agreement entered into by it or in any resolution passed by it in general meeting or by its Board of Directors includes a provision for the payment of fee for each meeting of the Board or a Committee thereof attended by any such director which is in excess of the sum specified under the first proviso, such provision shall be deemed to be an increase in the remuneration of such director and shall not, after it ceases to be a private company, or, as the case may be, becomes a public company, have any effect unless approved by the Central Government.".

Amendment of section 314.

48. In section 314 of the principal Act,—

(*a*) in sub-section (*1*), in clause (*b*), for the words "five hundred rupees or more", the words "such sum as may be prescribed" shall be substituted;

(*b*) in sub-section (*1B*),—

(*i*) for the words "three thousand rupees", the words "such sum as may be prescribed" shall be substituted;

(*ii*) the proviso shall be omitted;

(*c*) in sub-section (*2D*), the words, brackets, figure and letter "or (*2C*), as the case may be," shall be omitted.

Amendment of section 350.

49. In section 350 of the principal Act, for the portion beginning with the words "at the rate specified for the assets" and ending with the words "or those rules or otherwise", the words and figures "at the rate specified in Schedule XIV" shall be substituted.

Amendment of section 370.

50. In section 370 of the principal Act, the following *Explanation* shall be added at the end, namely:—

'*Explanation.*—For the purposes of this section, "loan" includes any deposit of money made by one company with another company.'.

Amendment of section 372.

51. In section 372 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) A company, whether by itself or together with its subsidiaries (hereafter in this section and section 373 referred to as the investing company), shall not be entitled to acquire, by way of subscription, purchase or otherwise (whether by itself, or by any individual or association of individuals in trust for it or for its benefit or on its account) the shares of any other body corporate except to the extent, and except in accordance with the restrictions and conditions, specified in this section.";

(*b*) in sub-section (*2*), in the opening paragraph, for the words "subscribed capital", the words "nominal value of the equity capital or the subscribed capital, whichever is less" shall be substituted;

(*c*) in sub-section (*4*), for the words "unless further it is approved", the words "unless previously approved" shall be substituted;

(*d*) in sub-section (*14*), for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) to investments by a holding company in its subsidiary, other than a subsidiary within the meaning of clause (*a*) of sub-section (*1*) of section 4;".

Amendment of section 383A.

52. In section 383A of the principal Act,—

(*a*) in sub-section (*1*), for the words "having a paid-up capital of rupees twenty-five lakhs or more", the words "of such sum as may be prescribed" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) If a company fails to comply with the provisions of sub-section (*1*), the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues:

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (*1*) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.".

Amendment of section 408.

53. In section 408 of the principal Act,—

(*a*) for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"(*1*) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the Company Law Board may, by order in writing, specify as

being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Company Law Board, on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necesary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an order as aforesaid, the Company Law Board may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Company Law Board.

(*2*) In case the Company Law Board passes an order under the proviso to sub-section (*1*), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Company Law Board may, by order, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.";

(*b*) in sub-section (*5*), for the words "Central Government", the words "Company Law Board" shall be substituted;

(*c*) in sub-section (*6*), the following shall be added at the end, namely:—

"and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.".

Amendment of section 462.

54. In section 462 of the principal Act, after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) Where an account referred to in sub-section (*4*) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,—

(*a*) to the Central Government, if that Government is a member of the Government company; or

(*b*) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.".

Amendment of section 551.

55. In section 551 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) Where a statement referred to in sub-section (*2*) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,—

(*a*) to the Central Government, if that Government is a member of the Government company; or

(*b*) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.".

Amendment of section 610.

56. In section 610 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), for the words "a fee of one rupee", the words "such fees as may be prescribed" shall be substituted;

(*ii*) in clause (*b*), for the words beginning with "a fee of one rupee" and ending with the words "copy of extract", the words "such fee as may be prescribed" shall be substituted;

(*b*) in sub-section (*2*), after the word "Court", wherever it occurs, the words "or the Company Law Board" shall be inserted.

Amendment of section 619A.

57. In section 619A of the principal Act, after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The provisions of this section shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.".

Insertion of new section 621A.

58. After section 621 of the principal Act, the following section shall be inserted, namely:—

Composition of certain offences.

2 of 1974.

'621A. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by—

(*a*) the Company Law Board; or

(*b*) where the maximum amount of fine which may be imposed for such offence does not exceed five thousand rupees, by the Regional Director,

on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the Regional Director, as the case may be, may specify;

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.—For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) Every Regional Director shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Company Law Board.

(4) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Company Law Board or the Regional Director, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(5) The Company Law Board or the Regional Director, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by order, if it or he thinks fit to do so, any

officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

(6) Any officer or other employee of the company who fails to comply with any order made by the Company Law Board or the Regional Director under sub-section (5) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding five thousand rupees, or with both.

2 of 1974. (7) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;

2 of 1974.

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(8) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.".

Amendment of section 634A.

59. In section 634A of the principal Act, the words and figures "under section 17, section 18, section 19, section 79, section 141 or section 186" shall be omitted.

Amendment of section 635.

60. In sub-section (4) of section 635 of the principal Act, the words and figures "under section 17, section 18, section 19, section 79 or section 186" shall be omitted.

Amendment of section 637.

61. In section 637 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government may, by notification in the Official Gazette, and subject to such conditions, restrictions and limitations as may be specified therein, delegate any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules,) to such authority or officer as may be specified in the notification.";

(b) in sub-section (2),—

(i) the words, brackets and letter "clause (b) of" shall be omitted;

(ii) the figures "409" shall be omitted;

(c) sub-section (2A) shall be omitted.

Amendment of section 637A.

62. In section 637A of the principal Act, in sub-section (2), the words "not exceeding one hundred rupees" shall be omitted.

Amendment of section 640A.

63. In section 640A of the principal Act, and in the heading before that section, for the word "Court" the words "Court or the Company Law Board" shall be substituted.

Amendment of section 640B.

64. In section 640B of the principal Act, in sub-section (*1*), for the figures and word "346, 352, 408 or 409", the figures and word "346 or 352" shall be substituted.

Insertion of new Schedules XIII and XIV.

65. After Schedule XII of the principal Act, the following Schedules shall be inserted, namely:—

'SCHEDULE XIII

(*See* section 269)

Conditions to be fulfielled for the appointment of a Managing or whole-time Director or a Manager without the prior approval of the Central Government

PART I

Appointments

1. No person shall be eligible for appointment as a managing or whole-time director or a manager of a company unless he satisfies the following conditions, namely:—

(*a*) he had not been convicted of an offence under any of the following Acts, namely:—

(*i*) The Indian Stamp Act, 1899 (2 of 1899),

(*ii*) The Central Excises and Salt Act, 1944 (1 of 1944),

(*iii*) The Imports and Exports (Control) Act, 1947 (18 of 1947),

(*iv*) The Industries (Development and Regulation) Act, 1951 (65 of 1951),

(*v*) The Prevention of Food Adulteration Act, 1954 (37 of 1954),

(*vi*) The Essential Commodities Act, 1955 (10 of 1955),

(*vii*) The Companies Act, 1956 (1 of 1956),

(*viii*) The Wealth-tax Act, 1957 (27 of 1957),

(*ix*) The Income-tax Act, 1961 (43 of 1961),

(*x*) The Customs Act, 1962 (52 of 1962),

(*xi*) The Gold (Control) Act, 1968 (45 of 1968),

(*xii*) The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),

(*xiii*) The Foreign Exchange Regulation Act, 1973 (46 of 1973),

(*xiv*) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974);

(*b*) he has completed the age of thirty years and has not attained the age of sixty-five years or the age of retirement, if any, specified by the company, whichever is earlier;

(*c*) he is not a managing or whole-time director or manager in any other company or a managing partner of a firm, or is not in whole-time employment anywhere;

(*d*) he is a citizen of India and is resident in India;

(*e*) he is not a relative of—

(*i*) any director, or

(*ii*) a shareholder holding more than two per cent. of the paid-up share capital.

PART II

Remuneration

Remuneration.

2. Subject to the ceiling limits laid down in section 198 and section 309, remuneration by way of salary, commission or both and perquisites shall not exceed the following limits, namely:—

Salary:—Rupees 1,80,000/- per annum or rupees 15,000/- per month including dearness and all other allowances calculated in the following scale:—

where the effective capital of the Company is—	monthly salary payable shall not exceed—
(i) less than 20 lakhs rupees	rupees 6,000/-
(ii) rupees 20 lakhs or more but less than rupees 50 lakhs	rupees 7,500/-
(iii) rupees 50 lakhs or more but less than rupees 1 crore	rupees 9,000/-
(iv) rupees 1 crore or more but less than rupees 3 crores	rupees 11,000/-
(v) rupees 3 crores or more but less than rupees 5 crores	rupees 13,000/-
(vi) rupees 5 crores or more	rupees 15,000/-

Explanation.—For the purposes of this Part, "effective capital" means the aggregate of the paid-up share capital amount, if any, for the time being standing to the credit of share premium account, reserves and surplus, long-term loans and deposits received, if any, as reduced by the aggregate of any investments, accumulated losses and preliminary expenses, not written off.

Commission:—

(*i*) In case commission is also payable along with the salary, it shall not be more than one per cent. of the net profits of the company, subject to a ceiling of fifty per cent. of the salary or Rs. 90,000/- per annum, whichever is less.

(*ii*) Where it is proposed to pay remuneration by way of commission only, such commission shall be subject to a maximum limit of rupees two lakhs seventy thousand per annum.

Perquisites:—

Perquisites may be allowed in addition to salary and/or commission or both. In the case of persons posted at Bombay, Calcutta, Delhi and Madras, perquisites shall be restricted to an amount equal to the annual salary or Rs. 1,35,000/- per annum, whichever is less. In the case of persons posted at other places, perquisites shall be restricted to an amount equal to the annual salary or Rs. 1,15.000/- per annum whichever is less. Unless the context otherwise requires, perquisites are classified into three categories 'A', 'B' and 'C' as follows:

Category—A

This will comprise house rent allowance, leave travel concession, medical reimbursement, fees on clubs and personal accident insurance. These may be provided for as under:—

(*i*) *Housing*—The expenditure by companies on hiring unfurnished accommodation for the appointee will be subject to the following ceilings:—

(a) *Bombay, Calcutta, Delhi and Madras* :

Sixty per cent. of the salary, over and above ten per cent. payable by the appointee.

(b) *other places* :

Fifty per cent. of the salary, over and above ten per cent. payable by the appointee.

The expenditure incurred by companies on gas, electricity, water and furnishings shall be valued as per the Income-tax Rules, 1962. This shall, however, be subject to a ceiling of ten per cent. of the salary of the person proposed to be appointed.

(*ii*) *Medical reimbursement*—Expenses incurred for the person to be appointed and the family subject to a ceiling of one month's salary in a year or three months' salary over a period of three years.

(*iii*) *Leave Travel Concession*—For the person proposed to be appointed and his family, once in a year incurred in accordance with any rules specified by the company.

(*iv*) *Club fees*—Fees of clubs subject to a maximum of two clubs. This will not include admission and life membership fees.

(*v*) *Personal Accident Insurance*—Premium not to exceed Rs. 1.000/- per annum.

Category—B

Contribution to provident fund, superannuation fund or annuity fund will not be included in the computation of the ceiling on perquisites to the extent these either singly or put together are not taxable under the Income-tax Act. Gratuity payable should not exceed half a month's salary for each completed year of service, subject to a ceiling of rupees 1,00,000.

Category—C

Provision of car for use on company's business and telephone at residence will not be considered as perquisites. Personal long distance calls on telephone and use of car for private purpose shall be billed by the company to the individual appointee concerned.

PART III

Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval sanctioned by a resolution of the share holders in general meeting.

2. The resolution referred to in paragraph (1) shall, in the event of loss or inadequacy of profits, provide for a cut of ten per cent. of the salary proposed to be paid under Part II of this Schedule.

3. The auditor or the secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (2) of section 269.

4. For the purposes of this Part, "loss or inadequacy of profits", in relation to the financial year in which an appointment is made under this Part, means such loss or inadequacy of profits which had not occurred either in the immediately preceding financial year or in any of the three financial years in the five immediately preceding financial years.

SCHEDULE XIV

(*See* section 350)

Rates of depreciation

Nature of assets	Single Shift		Double Shift		Triple Shift	
	W.D.V.	S.L.M.	W.D.V.	S.L.M.	W.D.V.	S.L.M.
1	2	3	4	5	6	7
I. (a) Buildings (other than factory buildings) NESD . . .	5 per cent.	1.63 per cent.	..	..	..	..
(b) Factory Buildings . . .	10 per cent.	3.34 per cent.	..	..	..	..
(c) Purely temporary erections such as wooden structures . .	100 per cent.	100 per cent.	..	..	..	..
II. Plant and Machinery						
(i) General rate applicable to plant and machinery (not being a ship) for which no special rate has been prescribed under (ii) below	15 per cent.	5.15 per cent.	22.5 per cent.	8.09 per cent.	30 per cent.	11.31 per cent.
(ii) Special rates						
A. 1 Cinematograph films—Machinery used in the production and exhibition of cinematograph films [N.E.S.D.]—						
(a) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs						
(b) Projecting equipment of film exhibiting concerns						
2 Cycles [N.E.S.D.]	20 per cent.	7.07 per cent.	..	..	..	..
3 Electrical machinery—Batteries; X-Ray and electro-therapeutic apparatus and accessories thereto [N.E.S.D.]						
4 Juice boiling pans (karhais) [N.E.S.D.]						
5 Motor-cars, motor cycles, scooters and other mopeds [N.E.S.D.]						
6 Electrically operated vehicles including battery powered or fuel call powered vehicles [N.E.S.D.]						

1	2	3	4	5	6	7
7 Sugarcane crushers (indigenous kolhus and belans) (N.E.S.) . . .						
8 Glass manufacturing concerns except direct fire glass melting furnaces—Recuperative and regenerative glass melting furnaces . . .	20 per cent.	7.07 per cent.	30 per cent.	11.31 per cent.	40 per cent.	16.21 per cent.
9 Machinery used in the manufacture of electric goods or components . . .						
B						
1 Aeroplanes—Aircraft, aerial photographic apparatus (N.E.S.)						
2 Concrete pipes manufacture—Moulds (N.E.S.)						
3 Drum container manufacture—Dies (N.E.S.)						
4 Earth-moving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. (N.E.S.)						
5 Glass manufacturing concerns except direct fire glass melting furnaces—Moulds (N.E.S.)						
6 Moulds in iron foundaries (N.E.S.)						
7 Mineral oil concerns—Field operations (above ground)—Portable boilers, drilling tools, well-head tanks, rigs, etc. (N.E.S.)	30 per cent.	11.31 per cent.	..	..	..	..
8 Mines and quarries—Portable underground machinery and earth-moving machinery used in open cast mining (N.E.S.)						
9 Motor buses and motor lorries other than those used in a business of running them on hire (N.E.S.)						
9A Motor tractors, harvesting combines (N.E.S.)						
10 Patterns, dies and templates (N.E.S.)						
11 Ropeway structures—Ropeways, ropes and trestle sheaves and connected parts (N.E.S.)						

1	2	3	4	5	6	7
12 Shoe and other leather goods factories—Wooden lasts used in the manufacture of shoes .	30 per cent.	11.31 per cent.	45 per cent.	18.96 per cent.	60 per cent.	29.05 per cent.
C						
1 Aeroplanes—Aero-engines (N.E.S.D.)						
2 Motor buses, motor lorries and motor taxies used in a business of running them on hire (N.E.S.D.)						
3 Rubber and plastic goods factories—Moulds (N.E.S.D.)	40 per cent.	16.21 per cent.	..	..	..	..
4 Data processing machines including computers (N.E.S.D.)						
5 Gas cylinders including valves and regulators (N.E.S.D.)						
D						
1 Artificial silk manufacturing machinery wooden parts						
2 Cinematograph films—Bulbs of studio lights						
3 Floor mills—Rollers						
4 Glass manufacturing concerns—Direct fire glass melting furnaces						
5 Iron and Steel industries—Rolling mill rolls						
6 Match factories—Wooden match frames						
7 Mineral oil concerns—(a) Plant used in field operations (below ground)—Distribution-returnable packages (b) Plant used in field operations (below ground) but not including assets used in field operations (distribution)—Kerbside pumps including underground tanks and fittings	100 per cent	100 per cent.	..	..	..	..
8 Mines and quarries—						
(a) Tubs, winding ropes, haulage ropes and sand stowing pipes						
(b) Safety lamps						
9 Salt works—Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clay material or any other similar material						
10 Sugar works—Rollers						

1	2	3	4	5	6	7	8
III. FURNITURE AND FITTINGS—							
1	General rates NESD	10 per cent.	3.34 per cent.	..	..	..	..
2	Rate for furniture and fittings used in hotels, restaurants and boarding houses; schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions NESD	15 per cent.	5.15 per cent.	..	..	..	..
IV SHIPS—							
1	Ocean-going ships—						
	(i) Fishing vessels with wooden hull NESD . . .	27.05 per cent.	10 per cent.				
	(ii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes NESD .	19.8 per cent.	7 per cent.				
	(iii) Other ships NESD .	14.6 per cent.	5 per cent.				
2	Vessels ordinarily operating on inland waters—						
	(i) Speed boats NESD .	20 per cent.	7.07 per cent.				
	(ii) Other vessels . NESD	10 per cent.	3.34 per cent.				

W.D.V. : means Written Down Value.

S.L.M. : means Straight Line Method.

NOTES

1. "buildings" include roads, bridges, culverts, wells and tube-wells.

2. "factory buildings" does not include offices, godowns, officers' and employees' quarters, roads, bridges, culverts, wells and tube-wells.

3. "speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometres per hour in still water and so designed that when running at a speed it will plane, i.e., its bow will rise from the water.

4. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata* basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.

5. The following information should also be disclosed in the accounts:

(i) depreciation methods used; and

(ii) depreciation rates or the useful lives of the assets, if they are different from the principal rates specified in the Schedule.

6. The calculations of the extra depreciation for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the year. For this purpose, the normal number of working days during the year shall be deemed to be—

(a) in the case of a seasonal factory or concern, the number of days on which the factory or concern actually worked during the year or 180 days, whichever is greater;

(b) in any other case, the number of days on which the factory or concern actually worked during the previous year or 240 days, whichever is greater.

The extra shift depreciation shall not be charged in respect of any item of machinery or plant which has been specifically excepted by inscription of the letters "N.E.S.D." (meaning "No Extra Shift Depreciation") against it in sub-items above and also in respect of the following items of machinery and plant to which the general rate of depreciation of 15 per cent. applies—

(1) Accounting machines.

(2) Air-conditioning machinery including room air-conditioners.

(3) Building contractor's machinery.

(4) Calculating machines.

(5) Electrical machinery—switchgear and instruments, transformers and other stationary plant and wiring and fitting of electric light and fan installations.

(6) Hydraulic works, pipelines and sluices.

(7) Locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns.

(8) Mineral oil concerns—field operations:

(a) Boilers.

(b) Prime movers.

(c) Process plant.

(d) Storage tanks (above ground).

(e) Pipelines (above ground).

(f) Jetties and dry docks.

(9) Mineral oil concerns—field operations (distribution)—kerosene pumps, including underground tanks and fittings.

(10) Mineral oil concerns—refineries:

(a) Boilers.

(b) Prime movers.

(c) Process plant.

(11) Mines and quarries:

(a) Surface and underground machinery (other than electrical machinery and portable underground machinery).

(b) Head-gears.

(c) Rails.

(d) Boilers.

(e) Shafts and inclines.

(f) Tramways on the surface.

(12) Neo-post franking machines.

(13) Office machinery.

(14) Overhead cables and wires.

(15) Railway sidings.

(16) Refrigeration plant containers, etc. (other than racks).

(17) Ropeway structures:

(a) Trestle and station steel work.

(b) Driving and tension gearing.

(18) Salt works—Reservoirs, condensers, salt pans, delivery channels and piers if constructed of masonary, concrete, cement, asphalt or similar materials; barges and floating plant; piers, quays and jetties; and pipe-lines for conveying brine if constructed of masonary, concrete, cement, asphalt or similar materials.

(19) Surgical instruments.

(20) Tramways electric and tramways run by internal combustion engines—permanent way: cars—car trucks, car bodies, electrical equipment and motors; tram cars including engines and gears.

(21) Typewriters.

(22) Weighing machines.

(23) Wireless apparatus and gear, wireless appliances and accessories.

Consequential amendments.

66. The provisions of the principal Act specified in column 2 of the Table below shall stand amended in the manner specified in the corresponding entries in column 3 of the said Table.

TABLE

Serial Number	Provision	Amendment
1	2	3
1	Section 43	In the proviso, for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.
2	Section 49	In sub-section (10), for the word "Court", the words "Company Law Board" shall be substituted.
3	Section 118	(a) In sub-section (1),— (i) in clause (a), for the words "the sum of one ruppee" the words "such sum as may be prescribed" shall be substituted; (ii) in clause (b), for the words "six annas", the words "such sum as may be prescribed"shall be substituted; (b) in sub-section (3) for the word "Court", the words "Company Law Board" shall be substituted.
4	Section 144	(a) in sub-section (2), for the words "one rupee", the words "such sum as may be prescribed" shall be substituted; (b) in sub-section (4), for the word "Court", the word "Company Law Board" shall be substituted.

1	2	3
5	Section 163	(*a*) In sub-section (*2*), in clause (*b*), for the words "a fee of one rupee", the words "such sum as may be prescribed" shall be substituted; (*b*) in sub-section (*3*), in clause (*b*) for the words "six annas", the words "such sum as may be prescribed" shall be substituted; (*c*) in sub-section (*6*), for the word "Court", the words "Company Law Board" shall be substituted.
6	Section 167	For the words "Central Government", wherever they occur, the words "Company Law Board" shall be substituted.
7	Section 188	In sub-section (*5*), for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.
8	Section 196	(*a*) In sub-section (*2*) for the words "six annas", the words "such sum as may be prescribed" shall be substituted; (*b*) in sub-section (*4*), for the word "Court", the words "Company Law Board" shall be substituted.
9	Section 225	In the proviso to sub-section (*3*), for the word "Court" at both the places where it occurs, the words "Company Law Board" shall be substituted.
10	Section 284	In the proviso to sub-section (*4*), for the word "Court' at both the places where it occurs, the words "Company Law Board" shall be substituted.
11	Section 304	In clause (*b*) of sub-section (*2*), for the word "Court", the words "Company Law Board" shall be substituted.
12	Section 307	In sub-section (*9*), for the word "Court", the words "Company Law Board" shall be substituted.
13	Chapter IVA of Part VI.	For the words "High Court" wherever they occur, the words "Company Law Board" shall be substituted.
14	Chapter VI of Part VI.	In the sub-heading "A. Powers of Court" and in sections 397 to 405, for the word "Court" wherever it occurs, the words "Company Law Board" shall be substituted.
15	Section 407	(*a*) In sub-section (*1*),— (*i*) in the opening paragraph, the words "of a Court" shall be omitted; (*ii*) in clause (*b*), for the word "Court", the words "Company Law Board" shall be substituted; (*b*) in sub-section (*3*), for the words "No Court shall grant leave", the words "No leave shall be granted" shall be substituted.

1	2	3
16	Section 409	For the words "Central Government" wherever they occur, the words "Company Law Board" shall be substituted.
17	Section 614	In sub-section (*1*), for the word "Court", the words "Company Law Board" shall be substituted.
18	Schedule XI	For the word "Court" wherever it occurs, the words "Company Law Board" shall be substituted.

Transitional provisions.

67. (*1*) Any matter or proceeding which, immediately before the commencement of the Companies (Amendment) Act, 1987 was pending before any Court shall, notwithstanding that such matter or proceeding would be heard by the Company Law Board after such commencement, be continued and disposed of by that Court after such commencement in accordance with the provisions of the principal Act as they stood immediately before such commencement.

(*2*) Any matter or proceeding which, immediately before the commencement of the Companies (Amendment) Act, 1987, was pending before the Company Law Board by virtue of any notification issued by the Central Government shall, unless such matter or proceeding would be heard by the Company Law Board after such commencement, be heard and disposed of by the Central Government.

STATEMENT OF OBJECTS AND REASONS

Government has, in the light of the recommendations made by the Expert Committee (Sachar Committee) and in the light of the experience gained in the administration of the Companies Act, 1956, over the last few years, felt it necessary to bring certain amendments to that Act.

2. The salient features of the amendments are:—

(a) the setting up of an independent Company Law Board to exercise such judicial and quasi-judicial functions as are presently being exercised either by the Court or the Central Government and are proposed to be transferred to that Board;

(b) compounding of offences punishable with fine;

(c) dispensing with Government approval for managerial appointments and remuneration subject to the fulfilment of certain statutory guidelines which are proposed to be incorporated in the Act itself;

(d) de-linking of the rates of depreciation from the rates specified under the Income-tax Act and laying down the rates of depreciation in the Act itself to reflect the true and fair view of the state of affairs of the company;

(e) protecting the interests of the investors by providing for intervention by the Company Law Board against non-repayment of public deposits; compulsory redemption of preference shares in certain cases; requiring companies to disclose reasons for refusal to register transfer of shares; and protecting the rights of the transferee pending mutation of his name in the register of members; and also compulsory listing of all public issues;

(f) reducing unnecessary cost or burden by requiring companies to attach only an abridged form of prospectus to the application form and only an abridged version of balance sheets and auditors' report to members and also by requiring companies to hold a poll in general meeting only at the instance of the shareholders having some minimum stake in the company; and further requiring companies to file full annual return only once in six years;

(g) provision for disclosure of information relating to conservation of energy, technology absorption, foreign exchange earnings and outgo as well as particulars of employees having some minimum stake in the company and drawing remuneration in excess of that drawn by managerial personnel.

3. The proposals also include provisions to plug loopholes and remove some lacunae which have come to surface in the working of the Act. It is also proposed to streamline some of the existing provisions for better working and administration of the Act. Certain consequential and incidental changes are also sought to be made. The Bill seeks to achieve the above objectives.

4. The Notes on clauses explain in detail the provisions of the Bill.

NEW DELHI;
The 17th August, 1987. J. VENGALA RAO,

Notes on clauses

Clause 2 brings the existing definition of "secretary" in section 2(45) of the Act in line with the definition of "Company Secretary" contained in the Company Secretaries Act, 1980 and seeks to define a secretary who is in whole-time practice.

Clause 3 revises the definition of "officer in default" so that officers and directors, who are in charge of management or who have been charged with the responsibility of complying with any of the provisions of the Act are held responsible for any contravention of the Act.

Clause 4 seeks to provide for the constitution of a Company Law Board which will exercise and discharge powers and functions conferred on it by the Act or under any other law. It also provides for the continued appointment by the Central Government of the existing Chairman and members thereof. The qualifications and experience of the members will be provided in rules and the Board will, in the exercise of its functions, be guided by the principles of natural justice and will have power to regulate its own procedure.

Clause 5 provides that the orders of the Company Law Board will be appealable to High Court on questions of law.

Clause 6—Sub-clause (a).—With the abolition of the office of managing agents and secretaries and treasurers, reference to such office in section 33 is being substituted by reference to managing and whole-time directors.

Sub-clause (b).—Statutory declaration of compliance of the formalities of incorporation which is presently authorised to be given by a practising advocate or a Chartered Accountant may as well be given by a practising Company Secretary. The amendment proposed in this clause seeks to achieve this.

Clause 7.—Sub-clause (a).—The value of average annual turn-over of rupees one crore as the ceiling for deeming a private company as public company in section 43A is being substituted to provide for a ceiling that may be prescribed. Further, the provision for laying down absolute monetary ceilings are being substituted by ceilings to be prescribed by rules.

Sub-clause (b).—This sub-clause provides that a private company which accepts deposits from the public should be deemed to be a public company.

Sub-clause (c).—Sub-sections (6) and (7) of section 43A are sought to be deleted as the exemption contained therein have been found to render the other provisions of the section nugatory.

Sub-clauses (d), (e) and (f).—The amendments proposed in these sub-clauses are of consequential nature.

Clause 8 empowers a company to furnish along with the application for shares/debentures an abridged form of prospectus, instead of the full prospectus, which is to be furnished on demand with a view to reducing the cost of public issue of capital.

Clause 9.—As a measure of protecting the interests of depositors, this clause provides for compulsory repayment of deposits unless renewed in the manner specified. It is intended to empower the Company Law Board to take cognizance of any case of non-payment of deposits on maturity and to provide adequate relief to the depositors. Non-compliance of the orders of the Company Law Board would attract penalty. A certain number of depositors, or depositors holding specified percentage of the total deposits due for repayment, may seek relief from the Company Law Board on the company's failure to make repayment as provided in law.

Clause 10 provides for compulsory listing of all public issues with recognised stock exchanges. Presently, listing of public issues is not compulsory. Further, as per the existing provisions, only the directors are made liable for failure to repay application money or the excess application money within the specified time, if the company fails to pay. It is proposed to make the company, in addition to the directors, who commit the default, liable to repay the application money or the excess application money, along with interest at a rate between 4 per cent. and 15 per cent. depending upon the period of delay. With a view to ensuring that an ordinary directors like nominees of Government|Financial Institution or do not attract the penal provisions, it is further proposed that only the director, who is an "officer in default" should be liable for prosecution.

Clause 11.—This amendment is consequential to the amendment proposed in clause 10.

Clauses 12 *to* 14.—Irredeemable preference shares in which substantial resources remain locked up have been working as a damper to further Investments. A new provision is sought to be introduced in the Act to ensure that all existing preference shares which are irredeemable or redeemable not earlier than ten years, are compulsory redeemed within five years. Further, companies can issue only such preference shares in future as are redeemable within ten years. It is also sought to be provided that irredeemable preference shares can be redeemed by issue of redeemable preference shares with the approval of the Company Law Board. Failure to redeem would attract penal provisions.

Clause 15.—To facilitate transferability of shares listed on the stock exchanges, this clause extends the period of currency of share transfer instruments from two months to twelve months.

Clause 16.—This clause seeks to recast the existing section 111 by incorporating therein the provisions of section 155, which confers powers on the High Court to order rectification of the register of members. With a view to providing adequate protection to investors against refusal to register transfer of shares, this clause requires companies to give reasons before they refuse any transfer of shares. It also confers rights on the aggrieved investor to apply for relief to the Company Law Board (instead of the High Court), on specified grounds.

Clause 17 seeks to remove a lacuna, advantage of which is often taken by companies to delay the issue of certificates of shares or debentures within the period of three months mentioned in section 113. This clause also seeks to transfer from the Court, and to vest in the Company Law Board, the power to direct a company or any of its officers to make good the default in complying with the provisions of this section.

Clause 18 seeks to empower the Registrar to accept for registration, the delayed filing of the particulars of charges and mortgages within a period of 30 days, as against seven days as at present, by imposing additional fees.

Clause 19 seeks to dispense with the time-consuming procedure of entering by hand the particulars of charges by providing that companies will henceforth file particulars of charges in the prescribed form and manner. As a safeguard this clause also provides for signing or initialling of each page of the register by the Registrar.

Clause 20 seeks to empower, in addition to the categories of persons mentioned in section 149, a secretary in whole-time practice to file the necessary declaration.

Clause 21 seeks to delete sections 155 and 156. This is consequent upon the amendment proposed in clause 16 of the Bill.

Clause 22.—Without sacrificing the purpose which the returns under section 159 are meant to serve, this clause provides for the filing of the annual return containing full particulars once in every six years, as against once in every three years, as at present.

Clause 23.—The rationale for the amendment proposed in this clause is the same as for the amendments proposed in clauses 6(a) and 20.

Clause 24.—Considering the vastness of the country and wide dispersal of share holding, this clause seeks to ensure that shareholders having some minimum specified interest should alone demand poll.

Clause 25.—Amendments proposed in this clause are consequent upon the amendments proposed in clause 46.

Clause 26.—This clause seeks to amend section 205 to provide that, in future depreciation shall be calculated in accordance with the rates specified in Schedule XIV to the Act, thus delinking depreciation under the Companies Act from that under the Income-tax Act.

It also seeks to prohibit a company from declaring any dividend on equity shares, or to transfer its profits to reserves, if it fails to redeem the irredeemable preference shares pursuant to the amendment proposed in clause 14 of the Bill.

Clause 27.—This clause seeks to amend section 205A to provide that all dividends remaining unpaid/unclaimed, whether dividend warrants have been posted or not, must be deposited in the Unpaid Dividend Account.

Clause 28.—With a view to providing protection to the investing public, this clause introduces a new section providing for payment of

dividend and allotment of bonus and rights shares, to the transferee on a mandate in this regard from the transferor and in the absence of such mandate, also imposes an obligation on the company to transfer the dividends accruing on such shares to the Unpaid Dividend Account and to keep in abeyance any offer of rights or bonus shares, till the title to shares is decided.

Clause 29 makes it obligatory on companies to maintain accounts on mercantile system only and plugs the existing lacunae which permit companies to maintain accounts on cash basis also.

Clause 30 seeks to amend section 217 to require companies to disclose prescribed particulars regarding conservation of energy, technology absorption and foreign exchange earnings and outgo. The absolute monetary ceilings are also proposed to be substituted by such ceiling as may be prescribed by the Central Government for disclosure of particulars of employees. It also enjoins on companies to disclose particulars of employees, who, having some financial stake in the company, are in receipt of remuneration in excess of that drawn by managerial personnel.

Clause 31.—This clause provides for compulsory posting of abridged version of balance sheet and profit and loss account and publishing of financial highlights in the newspapers by companies listed in the stock exchanges and for the supply of unabridged version only on payment of fee. On the same analogy, this clause also seeks to dispense with the requirement of sending notices of meetings to the debenture holders.

Clause 32.—In many cases companies adjourn Annual General Meetings and the default in not laying the balance sheet and profit and loss account is sought to be justified on the ground that the adjournment of the meeting is but a continuation of the meeting. This clause, therefore, provides that, in future, all companies will have to file the annual accounts with the Registrars within 30 days of calling the Annual General Meeting, irrespective of whether the annual accounts are laid before the Annual General Meeting or not.

Clause 33 ensures that the existing ceiling on number of audits per partner that could be taken up by firms of Chartered Accountants is not circumvented by appointing as partners such persons as are in whole-time employment elsewhere.

Clause 34 amplifies the existing *Explanation* to section 224A so as to include banks nationalised in 1980 within the concept of "nationalised bank".

Clause 35 imposes a ceiling on the number of cost audits by firms of Cost Accountants on the lines of the ceiling which applies to a firm of Chartered Accountants.

Clause 36.—Section 235 of the Act gives right to members of a company to make an application for conducting investigation into the affairs of a company. While the powers to appoint inspectors and to conduct investigation and to act on the report of investigation would remain with the Central Government it is proposed to empower the Company Law Board to consider such applications and cause an investigation to be made by the Central Government.

Clause 37 seeks to empower the Company Law Board, while considering the need for investigation under section 235 to require evidence to be produced before it.

Clause 38.—Although the power to appoint inspectors to conduct investigation and to act on the reports of the investigation would remain with the Central Government, this clause proposes to empower the Company Law Board to express opinion as regards the existence or otherwise of circumstances calling for investigation referred to in clause (b) of section 237.

Clause 39.—Consequent upon the amendments proposed in clauses 36 to 38, this clause seeks to ensure that a copy of the report of investigation when made at the instance of the Company Law Board is made available to that Board

Clause 40.—This amendment is consequential to the amendment proposed in clause 35.

Clauses 41 *to* 43.—The power to impose restriction and prevent change in management under section 250 which is presently with the Central Government is sought to be transferred to the Company Law Board. In order that the Company Law Board may not be handicapped in its proceedings under section 250 of the Act on transfer of the power to it, it is necessary to empower the Board without prejudice to the existing powers of the Central Government to cause investigation into the ownership of a company and to call for information in respect of the ownership of shares and debentures without prejudice to the powers of the Central Government to do so as enjoined by present sections 247 and 248 of the Act. Hence the amendments.

Clause 44.—The amendment proposed in this clause is consequential to the amendments proposed in clauses 36 to 43.

Clause 45.—This clause seeks to discourage frivolous notice to contest for election as director of a company by requiring a member desirous of sending a notice under section 257 to deposit a sum of Rs. 500 with the company. This sum shall be refunded to him in case he succeeds in being elected as a director. Otherwise, the sum so deposited shall be forfeited by the company.

Clause 46.—Sub-clause (1)—This sub-clause provides for compulsory appointment of managing or whole-time director or manager by public companies and private companies which are subsidiaries of public companies, having paid up capital of not less than rupees twenty-five lakhs.

Sub-clause (2)—This sub-clause dispenses with the requirement of prior approval for appointment of managerial personnel so long as the appointment and remuneration are in accordance with the norms, standards and procedure set out in Schedule XIII proposed to be inserted by clause 64 of this Bill. Approval of the Government will, however, be necessary in the case of inadequacy or absence of profits during specified financial year(s).

Sub-clauses (3) to (5)—These sub-clauses contain provisions relating to appointment of managerial personnel where such appointment would require approval of Central Government.

Sub-clauses (6) to (11)—These sub-clauses further clarify that failure to obtain approval, wherever necessary, within specified period, and appointment made in contravention of the conditions laid down in the proposed Schedule XIII shall constitute an offence. The proposed amendment also provides for suitable intervention by the Company Law Board for termination of any appointment.

Clause 47.—Sub-clause (a)—This sub-clause replaces the existing absolute monetary ceiling of sitting fees of rupees two hundred and fifty by a sum to be prescribed by the Central Government. The rationale for amendment proposed in this sub-clause is the same as indicated with reference to clause 7(a) of the Bill.

Sub-clause (b)—This sub-clause rectifies an existing lacuna by providing in section 310 that in the case of a private company which is converted into a public company or is a deemed public company, any provision in the Articles of Association or any resolution that may be passed by such company which authorises the payment of sitting fees exceeding the prescribed ceiling shall have no effect.

Clause 48.—This clause replaces the existing absolute monetary ceilings in section 314 by a ceiling which would be prescribed by the Central Government. The rationale for amendment proposed in this clause is the same as indicated with reference to clause 7(a) of this Bill.

Clause 49.—The rationale for the amendment proposed in this clause is sequal to the amendments made to section 205 relating to computation of depreciation. This clause empowers the Central Government to specify the rates of depreciation in a Schedule (Schedule XIV) to the Act.

Clause 50.—This clause clarifies that inter-corporate deposits shall be deemed to be loans within the meaning of section 370.

Clause 51.—Sub-clause (a)—This sub-clause seeks to ensure that the aggregate investments made by the holding company together with one or more of its subsidiaries, in excess of the prescribed limits, shall require prior approval of the Central Government.

Sub-clauses (b) and (c)—The amendments in these sub-clauses are of a clarificatory nature.

Sub-clause (d)—This sub-clause seeks to provide that the exemption from Government approval, as regards investment by a holding company in its subsidiary, should be permitted only in the case of genuine subsidiaries controlled by shareholding and not in the case of Board-controlled subsidiaries.

Clause 52.—Sub-clause (a)—The rationale for the amendment proposed in this sub-clause is the same as indicated with reference to clause 7(a) of this Bill.

Sub-clause (b)—Presently, there is no provision in the Act for any penalty for non-compliance of the statutory requirement of compulsory

appointment of a whole-time secretary. This sub-clause provides that failure to comply with this requirement would entail penalty.

Clause 53.—Sub-clauses (a) and (b) of this clause seek to confer power on the Company Law Board to decide whether it is necessary to appoint Government directors and to advise the Government accordingly. Sub-clause (c) of this clause seeks to enable the Central Government to effectively intervene by issuing directions to the company on which Government directors are appointed as regards change of auditors of the company or alteration of its Articles.

Clause 54.—Pursuant to the recommendations of the Committee on Papers laid on the Table of Rajya Sabha, this clause seeks to provide for laying of statements of accounts on the Tables of Houses of Parliament or Legislature of the State by all Government companies which are in the process of being wound up for the period beginning with the appointment of Official Liquidator and ending with the final dissolution.

Clause 55.—The rationale for the amendment proposed in this clause is the same as is indicated with reference to clause 51 of the Bill.

Clause 56.—Sub-clause (a)—The rationale for the amendment proposed in this clause is the same as is indicated with reference to clause 8(a) of the Bill.

Sub-clause (b)—This sub-clause is sequal to transfer some of the powers presently exercised by court to the Company Law Board.

Clause 57.—The rationale for the amendment proposed in this clause is the same as is indicated with reference to clause 54 of the Bill.

Clause 58.—This clause empowers the Company Law Board and the Regional Director to compound offences punishable by fine by imposing penalties in lieu of prosecution. The proposed amendment will also ensure compliance of law. The power to compound shall not be exercisable by the Company Law Board and the Regional Director in relation to offences which are punishable with imprisonment only or with imprisonment and fine.

Clauses 59 to 61.—The proposed amendments are consequential to the proposal to vest Company Law Board with independent powers in respect of certain matters having adjudicative elements where such powers are being exercised by the Central Government or the Court.

Clause 62.—The rationale for amendment in this clause is the same as indicated with reference to clause 8(a) of the Bill.

Clauses 63 *and* 64.—The rationale for the amendment proposed in these clauses is the same as is indicated with reference to clauses 59 to 61.

Clause 65.—This clause introduces two new Schedules. Schedule XIII lays down the requirements to be complied with for appointment of managing or whole-time director or manager with the prior approval of the Central Government pursuant to the proposal contained in clause 46 of the Bill. Schedule XIV lays down the rates of depreciation for the purposes of sections 205 and 350 of the Act, pursuant to the proposals contained in clauses 26 and 49 of the Bill.

Clause 66.—This clause provides in the form of a table to the Bill—

(a) the powers which were hitherto exercised by Court or the Central Government under various sections of the Act and which are proposed to be vested in the Company Law Board. The rationale for the amendments proposed in this clause is the same as indicated with reference to clause 4 of the Bill;

(b) the sections which provide for absolute monetary ceilings are to be substituted by ceilings which can be prescribed by the Central Government.

Clause 67.—The amendments proposed in this clause are in the nature of transitional provisions consequent upon the vesting in the Company Law Board of the powers presently exercisable by the Central Government and the High Courts.

Clause 68.—The amendments proposed in this clause are in the nature of transitional provisions consequent upon the vesting in the Company Law Board of the powers presently exercisable by the Central Government and the High Courts.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to amend section 10E of the Act to enable the Company Law Board to function as an independent judicial body. Some of the functions which are presently exercised by the High Courts are proposed to be transferred to the Company Law Board.

2. The proposed re-structuring of the Company Law Board would involve appointment of an independent and full time Chairman and appointment of additional members to the Company Law Board. Administrative and supporting facilities are also necessary. Recurring expenditure on pay and allowances of the Chairman and 8 members of the Company Law Board and additional officers and staff is estimated to be of the order of Rs. 32.14 lakhs per year.

3. The Bill, if enacted and brought into operation, will not involve any other expenditure, either recurring or non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill proposes to substitute section 5 of the Act relating to the meaning of "officer who is in default". Clauses (f) and (g) of the substituted section empowers the Board of directors of the company to entrust the responsibility of complying with the provisions of the Act to any person or a director of the company and requires the company to send a return to the Registrar in the form prescribed by rules.

2. Clause 4 of the Bill seeks to amend section 10E of the Act and according to the new sub-section (2A) thereof the qualifications and experience of the members of the Company Law Board are required to be prescribed by rules framed by the Central Government.

3. Clause 7 seeks to amend section 43A(1A) of the Act by providing that where the average annual turnover of a private company exceeds the amount prescribed by rules, it would be deemed to become a public company.

4. Clause 8 seeks to amend sub-section (3) of section 56 of the Act to provide that every issue of application for shares or debentures shall be accompanied by a memorandum containing such salient features of the prospectus as prescribed by the Central Government by rules.

5. Clause 10 seeks to amend section 73(2) of the Act to provide that the company and every director thereof who is in default will be liable to pay interest of not more than fifteen per cent. as may be prescribed by rules on all moneys received from applicants pursuant to the issue of prospectus in case of any delay in the repayment of amounts received from applicants.

6. Clause 16 seeks to substitute section 111 and to provide, *inter alia* that every application to the Company Law Board relating to refusal by a company to register in the register of members an applicant's name shall be accompanied by the prescribed fees.

7. Clause 19 seeks to insert sub-section (1A) to section 130 of the Act to provide that every company shall forward to the Registrar the particulars of charges requiring registration accompanied by such fees as may be prescribed and the Registrar shall keep the register in the prescribed form and in the prescribed manner. The fee for inspection of the register is also sought to be laid down by rules.

8. Clause 30 seeks to amend section 217(2A) of the Act to provide that the Board shall prepare a report giving details of every employee of the company who is in receipt of such sums of remuneration as may be prescribed by rules.

9. Clause 31 seeks to substitute section 219(2) of the Act to provide that a company shall send to any member, holder of debentures or de-

positors, on demand and on payment of the fees prescribed by rules, its last balance-sheet and other documents including profit and loss account and auditors' report.

10. Clause 46 seeks to substitute section 269 of the Act relating to appointment and re-appointment of managerial personnel and provides that such appointment or re-appointment shall be subject to the conditions specified in Schedule XIII of the Act and a return in the prescribed form shall be filed by the company within ninety days of the date of such appointment or re-appointment.

11. Clause 47 seeks to amend the proviso to section 310 of the Act to provide that the Central Government's approval would not be required if remuneration of a director by way of fee for attending meetings of the Board is not increased beyond the sum prescribed.

12. Clause 48 seeks to amend section 314 of the Act to provide that no partner or relative of a director of a company shall hold office or an office of profit in the company carrying such sum of remuneration as may be prescribed.

13. Clause 52 seeks to amend section 383A of the Act to provide that every company of such size as may be prescribed shall employ a whole-time secretary.

14. Clause 56 seeks to amend section 610 of the Act to provide that the Registrar may permit inspection of documents kept in his office or for issuing certified copies on payment of the prescribed fee.

15. Clause 64 seeks to amend section 637(1) of the Act to empower the Central Government to delegate certain powers to an authority or officer subject to the conditions, restrictions and limitation to be specified by notification.

16. Clause 66 of the Bill provides by means of a Table the substitution of certain words and provisions in the Act by certain other words and provisions. Serial numbers 3, 4, 5 and 8 thereof relate to substitution of specific amounts of fees by amounts that may be prescribed by rules.

17. The matters in respect of which the Central Government have been empowered to make rules and to specify by notification relate to matters of detail. The delegation of legislative power is, therefore of a normal character.

II

BILL No. XXXIV OF 1987

A Bill further to amend the Warehousing Corporation Act, 1962.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Warehousing Corporations (Amendment) Act, 1987.

58 of 1962.

Amendment of section 1.

2. In section 1 of the Warehousing Corporations Act, 1962 (hereinafter referred to as the principal Act), in sub-section (2), the words "except the State of Jammu and Kashmir" shall be omitted.

Amendment of section 2.

3. In section 2 of the principal Act, in clause (*dd*), the following shall be added at the end, namely:—

"or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.".

40 of 1980.

Insertion of new section 2A.

4. In Chapter I of the principal Act, after section 2, the following section shall be inserted, namely:—

Construction of references to any law not in force or any functionary not in existence in any State.

"2A. Any reference in this Act to any law which is not in force, or any functionary not in existence, in any State, shall, in relation to that State, be construed as a reference to the corresponding law in force, or the corresponding functionary in existence, in that State.".

STATEMENT OF OBJECTS AND REASONS

The Warehousing Corporations Act, 1962 extends to the whole of India except the State of Jammu and Kashmir. At the time of the enactment of the Act in 1962, entry 33 of the Concurrent List of the Seventh Schedule to the Constitution to which the Act is relatable was not made applicable to the State of Jammu and Kashmir. The entry has since been made applicable to the State of Jammu and Kashmir.

2. Government considers that the Warehousing Corporations Act should also be extended to the State of Jammu and Kashmir. Extension of the Warehousing Corporations Act, 1962 to the State of Jammu and Kashmir would give that State two benefits. Firstly, the Central Warehousing Corporation which is a central public sector corporation set up under the said Act, would be able to operate in the State. The second benefit is that the State Government would be able to set up its own State Warehousing Corporation, which Corporation could avail of the 50 per cent. equity contribution being made by the Central Warehousing Corporation to the State Warehousing Corporations as per the provisions of this Act. The balance 50 per cent. of the equity capital would be provided by the State Government.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 27th August, 1987.

H. K. L. BHAGAT.

III

BILL NO. XXXIII OF 1987

A Bill further to amend the Dock Workers (Regulation of Employment) Act, 1948.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Dock Workers (Regulation of Employment) Amendment Act, 1987.

Insertion of new sections 5D and 5E.

5 of 1948.

2. After section 5C of the Dock Workers (Regulation of Employment) Act, 1948, the following sections shall be inserted, namely:—

Annual report.

"5D. Every Board shall prepare, in such form and at such time in each financial year as may be specified by rules made under this Act, its annual report, giving full account of its activities during the previous financial year, and submit a copy thereof to the Government.

Annual report and audited accounts to be laid before Parliament or Legislature.

5E. The annual report, and the audited accounts of the Board, together with auditor's report thereon and a review by the Government on the working of the Board, shall, within a period of nine months of the close of the financial year, be laid before each House of Parliament, if such report and accounts have been submitted to the Central Government, and before the Legislature of the State, if such report and accounts have been submitted to the State Government:

Provided that where such report, accounts and the review are not laid before Parliament or, as the case may be, before the Legislature of the State within the said period, the same shall be so laid thereafter along with the reasons for the delay.".

STATEMENT OF OBJECTS AND REASONS

In 1984, the Committee on Papers laid on the Table (Seventh Lok Sabha) recommended that the annual reports and audited accounts of all the Dock Labour Boards should be placed on the Table of the House along with a Review of Government within nine months of the close of accounting year and also recommended that, if necessary, an amendment of the Dock Workers (Regulation of Employment) Act, 1948 or the rules, if any, may also be carried out to this effect. The Bill is for amending the Dock Workers (Regulation of Employment) Act, 1948 so as to provide—

(i) that the Dock Labour Boards shall submit their annual reports to the Government (There is already provision in the Act for submitting the audited accounts to the Government); and

(ii) for the laying of annual reports and the audited accounts on the Table of the Houses of Parliament or the State Legislature, as the case may be.

2. The Bill seeks to achieve the above objects.

NEW DELHI;
The 26th August, 1987.

RAJESH PILOT.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill proposes to insert new section 5D. It is being provided that every Board shall prepare its annual report in such form and at such time in each financial year as may be specified by rules made under the Act.

2. The delegation of legislative power is of normal character.

IV

BILL NO. XXXV OF 1987

A Bill to amend the Authorised Translations (Central Laws) Act, 1973.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. This Act may be called the Authorised Translations (Central Laws) Amendment Act, 1987. Short title.

50 of 1973.

2. In the Authorised Translations (Central Laws) Act, 1973 (hereinafter referred to as the principal Act), in the long title, for the words "authorised translations", the words "authoritative texts" shall be substituted. Amendment of long title.

3. In section 1 of the principal Act, in sub-section (*1*), for the words "Authorised Translations", the words "Authoritative Texts" shall be substituted. Amendment of section 1.

4. In section 2 of the principal Act, for the words "authorised translation", the words "authoritative text" shall be substituted. Amendment of section 2.

STATEMENT OF OBJECTS AND REASONS

Under section 2 of the Authorised Translations (Central Laws) Act, 1973, a translation in any language, other than Hindi, specified in the Eighth Schedule to the Constitution and published under the authority of the President of any Central Act or of any Ordinance promulgated by the President or of any order, rule, regulation or bye-law issued under the Constitution or under any Central Act shall be deemed to be the authorised translation thereof in such language.

2. Section 5(1) of the Official Languages Act, 1963 provides for authoritative texts in Hindi of Central Acts, etc. At present, there is no provision in the Authorised Translations (Central Laws) Act, 1973 for providing authoritative texts of Central Acts, etc., in the languages, other than Hindi, specified in the Eighth Schedule to the Constitution. As such, these cannot be quoted in courts of law. There has also been a general demand for authoritative texts of Central Acts, etc., in the languages, other than Hindi, specified in the Eighth Schedule to the Constitution. The proposed amendment is being brought forward to fulfil this demand. This will enable the authoritative texts of Central Acts, etc., in the languages, other than Hindi, specified in the Eighth Schedule to the Constitution to be quoted in courts of law and facilitate the use of these languages in courts of law located in States where such languages are the official languages.

NEW DELHI; BUTA SINGH.

The 27th August, 1987.

V

BILL NO. XXXVI OF 1987

A Bill to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the All India Council for Technical Education Act, 1987.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Commission" means the University Grants Commission established under section 4 of the University Grants Commission Act, 1956; 3 of 1956.

(*b*) "Council" means the All India Council for Technical Education established under section 3;

(*c*) "Fund" means the Fund of the Council constituted under section 16;

(*d*) "member" means a member of the Council and includes the Chairman and Vice-Chairman;

(*e*) "prescribed" means prescribed by rules made under this Act;

(*f*) "regulations" means regulations made under this Act;

(*g*) "technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

(*h*) "technical institution" means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;

(*i*) "University" means a University defined under clause (*f*) of section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under section 3 of that Act. 3 of 1956.

CHAPTER II

ESTABLISHMENT OF COUNCIL

Establishment of the Council.

3. (*1*) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Council by the name of the All India Council for Technical Education.

(*2*) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to contract and shall by the said name sue and be sued.

(*3*) The head office of the Council shall be at Delhi and the Council may, with the previous approval of the Central Government, establish offices at other places in India.

(*4*) The Council shall consist of the following members, namely:—

(*a*) a Chairman to be appointed by the Central Government;

(*b*) a Vice-Chairman to be appointed by the Central Government;

(*c*) the Secretary to the Government of India in the Ministry of the Central Government dealing with education, *ex officio;*

(*d*) the Educational Adviser (General) to the Government of India, *ex officio;*

(*e*) the Chairmen of the four Regional Committees, *ex officio;*

(*f*) the Chairmen of,—

(*i*) the All India Board of Vocational Education, *ex officio;*

(*ii*) the All India Board of Technician Education, *ex officio*;

(*iii*) the All India Board of Under-graduate Studies in Engineering and Technology, *ex officio;*

(*iv*) the All India Board of Post-graduate Education and Research in Engineering and Technology, *ex officio;*

(*v*) the All India Board of Management Studies, *ex officio;*

(*g*) one member to be appointed by the Central Government to represent the Ministry of Finance of the Central Government;

(*h*) one member to be appointed by the Central Government to represent the Ministry of Science and Technology of the Central Government;

(*i*) four members to be appointed by the Central Government by rotation to represent the Ministries and the Departments of the Central Government, other than those specified in clause (*g*) and (*h*);

(*j*) two members of Parliament, of whom one shall be elected by the House of the People and one by the Council of States;

(*k*) eight members to be appointed by the Central Government by rotation in the alphabetical order to represent the States and the Union territories:

Provided that an appointment under this clause shall be made on the recommendation of the Government of the State, or as the case may be, the Union territory concerned;

(*l*) four members to be appointed by the Central Government to represent the organisations in the field of industry and commerce;

(*m*) seven members to be appointed by the Central Government to represent,—

(*i*) the Central Advisory Board of Education;

(*ii*) the Association of Indian Universities;

(*iii*) the Indian Society for Technical Education;

(*iv*) the Council of the Indian Institutes of Technology;

(*v*) the Pharmacy Council of India;

(*vi*) the Council of Architecture;

(*vii*) the National Productivity Council;

(*n*) four members to be appointed by the Central Government to represent the professional bodies in the field of technical and management education;

(o) not more than two members to be appointed by the Central Government to represent such interests not covered by the foregoing clauses as the Central Government may deem fit;

(*p*) the Chairman, University Grants Commission, *ex officio;*

(*q*) the Director, Institute of Applied Manpower Research, New Delhi, *ex officio;*

(*r*) the Director-General, Indian Council of Agricultural Research, *ex officio;*

(*s*) the Director-General, Council of Scientific and Industrial Research, *ex officio;*

(*t*) Member-Secretary to be appointed by the Central Government.

(*5*) Notwithstanding anything contained in sub-section (*4*),—

(*a*) the first Chairman shall be the Minister of Human Resources Development of the Central Government;

(*b*) the first Vice-Chairman of the Council shall be the Minister of State for Education of the Central Government;

(c) the first Member-Secretary of the Council shall be the Educational Adviser (Technical) of the Central Government.

Term of office of members.

4. (*1*) The term of office of a member, other than an *ex officio* member, on the first constitution of the Council shall be five years and thereafter three years.

(*2*) If a casual vacancy occurs in the office of the Chairman, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, the Vice-Chairman holding office as such for the time being shall act as the Chairman and shall, unless any other person is appointed earlier as the Chairman, hold office of the Chairman for the remainder of the term of office of the person in whose place he is to so act.

(*3*) If a casual vacancy occurs in the office of the Vice-Chairman or any other member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(*4*) The Vice-Chairman shall perform such functions as may be assigned to him by the Chairman from time to time.

(*5*) The procedure to be followed by the members in the discharge of their functions shall be such as may be prescribed

Meetings of the Council.

5. (1) The Council shall meet at such time and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be provided by regulations:

Provided that the Council shall meet at least once every year.

(2) The Chairman and in his absence the Vice-Chairman shall preside at the meetings of the Council.

(3) If for any reason the Chairman or the Vice-Chairman is unable to attend any meeting of the Council any other member chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come up before any meeting of the Council shall be decided by a majority of the votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.

Vacancies, etc., not to invalidate proceedings of the Council.

6. No act or proceeding of the Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Council; or

(b) any defect in the appointment of a person acting as a member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Temporary association of persons with the Council for particular purposes.

7. (1) The Council may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the Council under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Council, and shall not be a member for any other purpose.

Appointment of officers and other employees of the Council.

8. (1) For the purpose of enabling it efficiently to discharge its functions under this Act, the Council shall, subject to such regulations as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary:

Provided that the appointment of such category of officers, as may be specified in such regulations, shall be subject to the approval of the Central Government.

(2) Every officer or other employee appointed by the Council shall be subject to such conditions of service and shall be entitled to such remuneration as may be determined by regulations.

Authentication of orders and other instruments of the Council.

9. All orders and decisions of the Council shall be authenticated by the signature of the Chairman or any other member authorised by the Council in this behalf, and all other instruments issued by the Council shall be authenticated by the signature of the Member-Secretary or any other officer of the Council authorised in like manner in this behalf.

CHAPTER III

POWERS AND FUNCTIONS OF THE COUNCIL

Functions of the Council.

10. (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may—

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) coordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grants, on such terms and conditions as it may think fit to—

(i) technical institutions, and

(ii) Universities imparting technical education in coordination with the Commission;

(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(*h*) formulate schemes for the initial and in service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(*i*) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(*j*) fix norms and guidelines for charging tuition and other fees;

(*k*) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(*l*) advice the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;

(*m*) lay down norms for granting autonomy to technical institutions;

(*n*) take all necessary steps to prevent commercialisation of technical education;

(*o*) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(*p*) inspect or cause to inspect any technical institution;

(*q*) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(*r*) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(*s*) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(*t*) advice the Commission for declaring any institution imparting technical education as a deemed University;

(*u*) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme;

(*v*) perform such other functions as may be prescribed.

Inspection.

11. (*1*) For the purposes of ascertaining the financial needs of technical institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.

(*2*) The Council shall communicate to the technical institution or University the date on which any inspection under sub-section (*1*) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(*3*) The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.

(*4*) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (*3*).

CHAPTER IV

BODIES OF THE COUNCIL

Executive Committee of the Council.

12. (*1*) The Council shall constitute a Committee, called the Executive Committee for discharging such functions as may be assigned to it by the Council.

(*2*) The Executive Committee shall consist of the following members, namely:—

(*a*) the Chairman of the Council;

(*b*) the Vice-Chairman of the Council;

(*c*) Secretary to the Government of India in the Ministry of the Central Government dealing with Education, *ex officio;*

(*d*) two Chairmen of the Regional Committees;

(*e*) three Chairmen of the Boards of Studies;

(*f*) a member of the Council representing the Ministry of Finance of the Central Government, *ex officio*;

(*g*) four out of eight members of the Council representing the States and Union territories under clause (*k*) of sub-section (*4*) of section 3;

(*h*) four members with expertise and distinction in areas relevant to Technical Education to be nominated by the Chairman of the Council;

(*i*) the Chairman of the University Grants Commission, *ex officio*;

(*j*) the Director, Institute of Manpower Research, *ex officio;*

(*k*) the Director General of Agricultural Research, *ex officio*;

(*l*) the Member-Secretary of the Council.

(3) The Chairman and the Member-Secretary of the Council shall, respectively, function as the Chairman and the Member-Secretary of the Executive Committee.

(4) The Chairman or in his absence, the Vice-Chairman of the Council shall preside at the meetings of the Executive Committee and in the absence of both the Chairman and the Vice-Chairman, any other member chosen by the members present at the meeting shall preside at the meeting.

(5) The Executive Committee shall meet at such time and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as the Council may provide by regulations.

Boards of Studies.

13. (*1*) The Council shall establish the following Boards of Studies, namely:—

(*i*) All India Board of Vocational Education;

(*ii*) All India Board of Technical Education;

(*iii*) All India Board of Under-graduate Studies in Engineering and Technology;

(*iv*) All India Board of Post-graduate Education and Research in Engineering and Technology;

(*v*) All India Board of Management Studies.

(2) The Council may, if it considers necessary, establish such other Boards of Studies as it may think fit.

(3) Every Board of Studies shall advise the Executive Committee on academic matters falling in its area of concern including norms, standards, model carricula, model facilities and structure of courses.

(4) The area of concern, powers, the constitution and functions of the Boards of Studies shall be such as the Council may provide by regulations.

Regional Committees.

14. (*1*) The Council shall establish the following Regional Committees, namely:—

(*i*) The Northern Regional Committee with its office at Kanpur;

(*ii*) The Southern Regional Committee with its office at Madras;

(*iii*) The Western Regional Committee with its office at Bombay;

(*iv*) The Eastern Regional Committee with its office at Calcutta.

(2) The Council may, if it considers necessary, establish such other Regional Committees as it may think fit.

(3) The Regional Committee shall advise and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region.

(4) The region for which the Regional Committees may be established and the constitution and functions of such Committees shall be prescribed by regulation.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

Payment to the Council.

15. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Council in each financial year such sums as may be considered necessary for the performance of its functions of the Council under this Act.

Fund of the Council.

16. (1) The Council shall have its own Fund; and all sums which may, from time to time, be paid to it by the Central Government and all the receipts of the Council (including any sum which any State Government or any other authority or person may hand over to the Council) shall be credited to the Fund and all payments by the Council shall be made therefrom.

(2) All moneys belonging to the Fund shall be deposited in such banks or invested in such manner as may, subject to the approval of the Central Government, be decided by the Council.

(3) The Council may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the Fund of the Council.

Budget.

17. The Council shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure, and copies thereof shall be forwarded to the Central Government.

Annual report.

18. The Council shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year, and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

Accounts and audit.

19. (1) The Council shall cause to be maintained such books of account and other books in relation to its account in such form and in such manner as may, in consultation with the Comptroller and Auditor-General of India, be prescribed.

(2) The Council shall, as soon as may be, after closing its annual accounts prepare a statement of accounts in such form, and forward the same to the Comptroller and Auditor-General of India by such date, as the Central Government may, in consultation with the Comptroller and Auditor-General, determine.

(3) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India at such times and in such manner as he thinks fit.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this

behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

CHAPTER VI

MISCELLANEOUS

Directions by the Central Government.

20. (*1*) The Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

(*2*) The decision of the Central Government as to whether a question is one of policy or not shall be final.

Power to supersede the Council.

21. (*1*) If the Central Government is of the opinion that the Council is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 20, the Central Government may, by notification in the Official Gazette, supersede the Council for such period as may be specified in the notification:

Provided that before issuing a notification under this sub-section, the Central Government shall give a reasonable time to the Council to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Council.

(*2*) Upon the publication of a notification under sub-section (*1*) superseding the Council,—

(*a*) all the members of the Council shall, notwithstanding that their term of office had not expired, as from the date of supersession, vacate their offices as such members;

(*b*) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Council shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct;

(*c*) all property vested in the Council shall, during the period of supersession, vest in the Central Government.

(*3*) On the expiration of the period of supersession specified in the notification issued under sub-section (*1*), the Central Government may—

(*a*) extend the period of supersession for such further period as it may consider necessary; or

(*b*) reconstitute the Council in the manner provided in section 3.

Power to make rules.

22. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the procedure to be followed by the members in the discharge of their functions;

(*b*) the inspection of technical institutions and Universities;

(*c*) the form and manner in which the budget and reports are to be prepared by the Council;

(*d*) the manner in which the accounts of the Council are to be maintained; and

(*e*) any other matter which has to be, or may be, prescribed.

Power to make regulations.

23. (*1*) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) regulating the meetings of the Council and the procedure for conducting business thereat;

(*b*) the terms and conditions of service of the officers and employees of the Council;

(*c*) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(*d*) the area of concern, the constitution, and powers and functions of the Board of Studies;

(*e*) the region for which the Regional Committee be established and the constitution and functions of such Committee.

Rules and regulations to be laid before Parliament.

24. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

25. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The All India Council for Technical Education (AICTE) was set up in 1945 by a Government resolution as a National Expert Body to advice the Central and the State Governments for ensuring the co-ordinated development of technical education in accordance with approved standards. During the first three decades the Council functioned quite effectively and there was phenomenal development of technical education in this period. However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE. Most of these institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards.

2. Taking into account the growing erosion of standards, the Council at its meeting held in 1981 came to the conclusion that a stage had been reached when it should be vested with statutory powers to regulate and maintain standards of technical education in the country. In pursuance of these and other recommendations, a National Working Group was set up in November, 1985 to look into the role of the AICTE. The National Working Group recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National Policy on Education, 1986, also stipulated that the AICTE will be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the coordinated and integrated development of technical and management education.

3. The Bill seeks to provide statutory powers to the All India Council for Technical Education to ensure:

(i) proper planning and co-ordinated development of the technical education system throughout the country;

(ii) promotion of qualitative improvement of technical education in relation to planned quantitative growth, and

(iii) regulation of the system and proper maintenance of norms and standards.

Accordingly, the powers and functions assigned to the AICTE, *inter alia*, provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions. As part of this overall coordination and developmental responsibilities, the AICTE will also

give grants to institutions for identified developmental purposes. In addition, the AICTE will promote innovation, research and development, linkages with industry and greater access to technical education by women, handicapped, and the weaker sections of the society.

4. The Bill seeks to achieve the above objective.

NEW DELHI;
The 26th August, 1987.

P. V. NARASIMHA RAO.

FINANCIAL MEMORANDUM

The All India Council for Technical Education will have, among other functions, a function to provide funds to institutions imparting technical education, for various developmental purposes. The funds of the Council will be given to it by the Central Government each financial year for carrying out its functions. Going by the present level of the grants made available for technical education by the Central Government, it is likely that the AICTE will distribute grants of the order of Rs. 200 crores per year for the Plan Schemes during the Seventh Plan. The Council will have its own Secretariat which shall be adequately staffed with professional and technical personnel besides the necessary supporting staff. The Council shall have its own building to house the staff and shall acquire its own equipment and furniture to facilitate its functioning. On this account, the non-recurring expenditure will be of the order of Rs. 5 crores and the recurring expenditure of Rs. 1.5 crores per annum by the end of the Seventh Plan period.

Clause 15 of the Bill enables the Central Government to pay to the Council in each financial year such sums as may be considered necessary for the performance of functions of the Council after due appropriation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. The matters in respect of which rules may be made, *inter alia*, relate to the procedure to be followed by members in the discharge of their functions, the inspection of technical institutions and Universities, the form and manner in which the budget and reports are to be prepared by the Council and the manner in which the accounts of the Council are to be maintained.

2. Clause 23 of the Bill empowers the All India Council for Technical Education to make regulations consistent with the provisions of the Bill and the rules made thereunder. The matters in respect of which regulations may be made, *inter alia*, relate to regulating the meetings of the Council and the procedure for conducting business thereat, the terms and conditions of service of the officers and employees of the Council, regulating the meetings of the Executive Committee and the procedure for conducting business thereat, the area of concern, the constitution, and powers and functions of the Boards of Studies, region for which Regional Committee be established and the constitution and functions of such Committee.

3. The matter in respect of which the rules or regulations may be made are matters of procedure and administrative detail. The Delegation of Legislative Powers is thus of a normal character.

SMT. K. K. CHOPRA,
Additional-Secretary.

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